

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1364 of 1985

Hon'ble MR.JUSTICE Y.B.BHATT

=====

1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

HIRALAL BHOGABHAI MANEK

Versus

KANTILAL NAGJIBHAI RATHOD

Appearance:

MR DU SHAH for Petitioner

MS SONAL H PUJARA for Respondent

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 11/07/2000

ORAL JUDGEMENT

1. This is a revision under section 29(2) of the Bombay Rent Act, at the instance of the original plaintiff-landlord against the respondent-defendant tenant.

2. The plaintiff-landlord had sued the

defendant-tenant for a decree for eviction and arrears of rent, etc., on the ground that the defendant was in arrears of rent for more than six months on the date of statutory notice under section 12(2) of the said Act.

3. On receipt of the statutory notice by the tenant, the tenant filed a standard rent application under section 11(3) of the Rent Act within the period of limitation. Obviously, therefore, section 12(3)(a) of the Rent Act would not be applicable to the facts of the case. The trial court then, on a total appreciation of the evidentiary material on record, held firstly that the section 12(3)(b) of the Rent Act would apply and secondly that the defendant-tenant has failed to make payment or deposit in court as required by section 12(3)(b) of the Act. The trial court, therefore, passed a decree for eviction and for arrears of rent, etc.

4. The tenant being aggrieved by the said judgement and decree, preferred an appeal under section 29(1) of the Act. The lower appellate court, after hearing the parties and on a reappraisal of the evidence on record, allowed the appeal and set aside the trial court's judgement and decree. Hence the present revision at the instance of the original plaintiff-landlord.

5. I am conscious of the limitations of this court while exercising revisional jurisdiction under section 29(2) of the Bombay Rent Act. However, it is well settled law that such jurisdiction can be exercised with a view to satisfying itself that the impugned order or decision or decree is according to law or otherwise. The revisional court certainly has jurisdiction to interfere where it is found that the impugned judgement and decree are based on a total misreading of the evidence, or tainted with illegality or non-application of mind. On the facts of this case as they appear on record, I am satisfied that this case certainly qualifies as one which has been decided by the lower appellate court on a total non-application and total misapplication of the appropriate law on the subject, and if permitted to stand would result in a travesty of justice.

6. As aforesaid, the tenant had filed an application under section 11(3) of the Rent Act for determination of the standard rent. However, it is pertinent to note that the tenant did not obtain any interim orders on the application, and in fact had not even prayed for any interim orders.

6.1 The trial court had framed the issues on 24th

August 1981, and this is the relevant date by which the tenant was required to deposit the arrears of rent and other dues in order to demonstrate his readiness and willingness to pay. However, the tenant had not made any deposit whatsoever in the trial court by this date. Furthermore, no time was sought to make such deposit.

7. The plaintiff-landlord was, therefore, required to file Exh.20 on 21st September 1981 to the trial court, under section 11(4) of the said Act for orders directing the tenant to make payment or deposit the amount in court within such time as may be permitted by the court. It may be noted that no orders were passed on the same day, but the matter was fixed for hearing and orders on 22nd September 1981. When this order was passed on 21st September 1981, the defendant's advocate was also present. On the date of hearing viz. 22nd September 1981, the defendant's advocate was present, but no orders were passed on the landlord's application Exh.20. The matter was then adjourned from time to time and ultimately the trial court passed an order below the landlord's application Exh.20 under section 11(4) of the Act, directing the defendant to pay or to deposit in court a sum of Rs.4730/- latest by 14th December 1981, and thereafter to regularly deposit in court a sum of Rs.55/- per month, every month.

7.1 At this stage it is required to be noted that the tenant had made certain deposits after the suit was filed. They are as under:

1. Rs.300/- on 28th July 1981 (before framing of the issues.
2. Rs.600/- on 14th August 1981 (before framing of the issues.
3. Rs.400/- on 3rd October 1981 (after framing of the issues).

From these deposits made it is obvious that the first part of section 12(3)(b) has not been complied with by the tenant inasmuch as on the first date of hearing of the suit, i.e. on the date of framing of the issues the tenant failed to deposit the rent then due.

7.2 When the trial court directed by its order dated 27th November 1981 the defendant to make payment or deposit of a specific amount of Rs.4730/-, it is possible that it had taken into account the earlier deposit totalling to Rs.1300/-. In that case the tenant would be

required to deposit the amount as directed by the court. Even assuming that the trial court had omitted to consider the earlier deposit of Rs.1300/-, the tenant could have applied to the trial court for clarification and/or for permission to deposit the balance of the amount after giving credit for the earlier deposit. Firstly, the tenant did not apply for any clarification, nor did the tenant deposit the amount, nor any part of the amount, by the due date which was specified by the trial court as 14th December 1981.

8. Thereafter the tenant continued to ask for adjournments on various grounds. Exh.33 is the tenant's application to challenge the order below Exh.20 by way of a revision. Exh.34 is the tenant's application for time to make the deposit. However, no specific order has been obtained on the application Exh.34. Thereafter the tenant continued to file applications for adjournment, simply on the ground of his intention to file a revision against the order below Exh.20. These applications are Exhs.35, 36, 38 and 39. It is also pertinent to note that in none of these applications, for adjournment on the ground of his intention to file a revision, has the tenant even prayed for a stay of the order below Exh.20. Thus, when the trial court passed an order below Exh.20 directing the tenant to make the deposit latest by 14th December 1981, that order was continuously in force.

8.1 However, this interim order of the trial court has not been complied with by the tenant even in part, until the trial court delivered its judgement on 25th March 1982.

9. The lower appellate court has completely misdirected itself, either out of sympathetic considerations for the tenant or in total ignorance of the law, by observing that the tenant has been regular in making deposits "during the course of the appeal". What the lower appellate court completely failed to appreciate is that although an appeal is an extension of the suit, the readiness and willingness of the tenant to pay or deposit the necessary amount is not restricted to the suit, but must also be demonstrated during the pendency of the appeal. This cannot in any way be interpreted to mean that the tenant need not demonstrate his readiness and willingness to pay during the pendency of the suit, or that non-compliance with the interim orders of the trial court is condoned by law merely because he is regular in payment during the course of appeal.

10. The position in law is very clear on this aspect.

Merely because the tenant is regular in deposits during the course of the appeal would not confer upon him the protection available under section 12(3)(b) of the Act, unless he has first demonstrated his readiness and willingness to pay during the course of the trial before the trial court. This position is amply clear from a combined reading of section 12(3)(b) read with clause (1) of subsection (b), which emphasises that he must continue to pay or tender in court the amount "till the suit is finally decided". Even otherwise, this view has also been confirmed in a previous decision of this court in the case of Rameshchandra P. Panchal Vs. Vithalbhai P. Patel, reported at 1996(1) GLH 253.

11. To summarise, therefore, the lower appellate court has totally and completely misread or misapplied the law while dealing with the facts of the case, and has further completely ignored the factual evidence on record to the effect that the interim order of the trial court as regards making deposit in court by due date has not been complied with at all.

12. In the premises aforesaid, the judgement and decree of the lower appellate court, if permitted to stand, would amount to a perversity in law and would result in the travesty of justice. The same is, therefore, required to be quashed and set aside. It is accordingly so found and held. This revision is, therefore, allowed and rule is made absolute with no order as to costs.

13. At this stage learned counsel for the tenant seeks time to vacate the premises. Accordingly six months time is granted to vacate the premises. The trial court decree shall not be executed upto 11th January 2001, subject to the condition that the tenant files the usual undertaking in this court within two weeks from today. It is clarified that there shall not be any extension of time for the purpose of filing the undertaking and if the same is not filed by due date, the relief against execution granted hereinabove shall stand vacated ipso facto.

ar